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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,382	04/30/2004	Michael P. Schoemann	MASL-37	3381

37690 7590 03/27/2006

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EXAMINER

PATEL, KIRAN B

ART UNIT PAPER NUMBER

3612

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/709,382	Applicant(s) SCHOEMANN ET AL.	
	Examiner Kiran B. Patel	Art Unit 3612	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,8-10,15 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,8-10,15 and 22-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/21/06, 1/17/06</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

#2 Non-Final Rejection (3/21/06)

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-2, 8-10, 15, are rejected under 35 U.S.C. 103(a) as being unpatentable over Stein et al. (6,821,465) in view of Japan (JP 2000-264361).

Regarding claims 1-2, 8-10, 15, Stein et al. (6,821,465) discloses the invention as claimed to include a body including a door, a door trim panel 10, the door trim panel including a cover stock 22; an armrest 12 coupled to the cover stock and having a first density 14; an upper energy absorber Fig 2 disposed above the armrest and having a second density 16 higher than the first density; and a lower energy absorber Fig 2 disposed below the armrest and having a third density 16 higher than the first density; wherein the second and third densities are substantially equal.

However, Stein et al. (6,821,465) does not disclose the foam to be polyolefin bead foam.

Japan (JP 2000-264361) discloses the foam to be polyolefin bead foam.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention, as disclosed by Stein et al. (6,821,465), to include the foam to be polyolefin bead foam, as disclosed by Japan (JP 2000-264361), to provide the door trim panel to include the armrest with energy absorbers with excellent shock absorbing buffer taught by Japan (JP 2000-264361).

2. Claim(s) 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stein et al. (6,821,465) as applied to claim 1 and further in view of ordinary skill in the art.

Regarding Claim(s) 22-26, Stein et al. (6,821,465) discloses the invention as claimed.

However, Stein et al. (6,821,465) does not disclose varied ranges of densities for the first, second and third densities.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide varied ranges of densities for the first, second and third densities, since it has been held to be within the general skill of a worker in the art to use the available foam with required density as specified by the design specification which would provide the desire level of protection for the passengers in the event of a side impact.

### **Response to Arguments**

3. Applicant's arguments filed 3/8/06 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Polyolefin bead foam is used to provided an armrest with excellent shock absorbing properties as taught by Japan (JP 2000-264361).


In response to applicant's argument that Japan (JP 2000-264361) is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the particular problem with which applicant was concerned was energy absorber (shock absorber).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that

any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

**Conclusion**

4. Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Kiran B. Patel whose telephone number is 571-272-6665. The examiner can normally be reached on M-F from 8:00 to 5:00. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

  
Kiran B. Patel, P. E.  
Primary Examiner  
Art Unit 3612  
March 21, 2006